

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon

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Employment

A former Portland State University (PSU) employee filed an action claiming employment discrimination in violation of 42 U.S.C. §§ 1981, 1983, Title VII and various state law theories. Also named as defendants in their individual, official capacities were plaintiff's former superiors. Plaintiff alleged that he was terminated when he complained about physical assaults that he had been subjected to by a co-employee. Plaintiff claimed that his superiors refused to make any investigation or take any action against the co-worker and advised the plaintiff that they were refusing to do so because the co-worker was an African-American and they feared a race discrimination action. Plaintiff challenged his termination and it was affirmed in an administrative proceeding. Plaintiff then appealed this decision to the Oregon Court of Appeals and that action is still pending. Defendants moved to dismiss.

Judge Ann Aiken refused to dismiss the action on grounds that the plaintiff had failed to exhaust state remedies, noting that exhaustion is not required for federal claims under § 1983. The court also rejected the argument that the action should be barred by res

judicata based upon the prior administrative proceeding. Judge Aiken held that the administrative decision did not constitute a final judgment because the plaintiff appealed that decision.

The court granted dismissal of the §1983 claims and the state law claims against PSU on grounds that such claims were barred by the Eleventh Amendment. The court found that PSU was an arm of the state and thus, generally immune from liability for all claims except those under § 1981. The court found that the § 1981 claims were not barred because Congress expressly abrogated the states' immunity to these claims with the passage of the Civil Rights Act of 1991.

Judge Aiken denied the individual defendants' motion to dismiss in its entirety. She found that plaintiff could maintain an action for injunctive relief to preclude defendants from making false and defamatory statements regarding the reasons for his termination. The court denied defendants' qualified immunity defenses and held that plaintiff had sufficiently stated a claim for intentional infliction of emotional distress since defendants' actions, if proven, could be considered socially intolerable conduct. Whether the individual defendants could rely

upon an absolute or conditional privilege to defend plaintiff's defamation claims required a factual inquiry and was thus an inappropriate ground for dismissal. Potts v. Walsh, CV 98-1384-AA (Opinion, April, 1999 - 15 pages).

Plaintiff's Counsel: Craig Crispin
Defense counsel: William Sharp

7 Under Oregon's Worker's Compensation system, any worker with a preexisting condition must establish that her work related injury is the "major contributing cause of the need for treatment of the combined condition."

A plaintiff who is morbidly obese and who injured her back while at work filed a claim for worker's compensation benefits. Plaintiff's claim was denied on grounds that she failed to establish that the work injury was the major contributing cause of her need for treatment. An administrative judge found that plaintiff's obesity was the primary cause of her injury.

Plaintiff then filed an action in federal court alleging that the preexisting condition provision of Oregon's Worker's compensation system violated the Americans with Disabilities Act (ADA) since it imposed a greater burden upon disabled employees than those not disabled.

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On cross-motions for summary judgment, Judge Malcolm Marsh rejected plaintiff's challenge. The court noted that the Oregon Court of Appeals had expressly rejected the same arguments plaintiff raised in this proceeding and the Court found that opinion persuasive and held that the Oregon statute did not violate the ADA, nor was it preempted by the ADA. Judge Marsh also noted that the Worker's Compensation system was one of insurance and thus, fell within the ADA's savings clause for such preexisting condition exclusions. Gaddis v. Oregon, CV 99-243-MA (Order, April 20, 1999 - 4 pages).

Plaintiff's Counsel:

Michael Gilbertson

Defense Counsel: David Landrum

Punitive Damages

Judge Ancer L. Haggerty granted a motion to dismiss filed by American Family Publishers. The plaintiff filed an action against the Publisher alleging breach of contract, unfair trade practices and unlawful debt collection practices under Oregon statutory laws. Plaintiff sought to recover payments made to defendant, statutory damages, punitive damages, costs and attorney fees. Plaintiff's first complaint was filed on 15 May 1998, but plaintiff agreed to file an amended complaint after defendant filed a motion to dismiss. In the amended complaint, plaintiff increased her prayer for punitive

damages from \$50,000 to \$75,000, and enhanced her description of defendant's allegedly intentionally deceptive billing practices. Essentially, plaintiff alleged that because of defendant's deceptive billing practices, she was induced to pay for a magazine subscription she ordered from defendant three times. She averred that she suffered a loss of \$29.90, and was entitled to statutory damages of \$200, or her actual damages, including pain and suffering, of \$50,000. She also demanded \$75,000 in punitive damages to deter defendant from continuing its allegedly illegal business practices.

A claim for punitive damages is given close scrutiny when the claim is relied upon to establish jurisdiction. Because this case was based on diversity jurisdiction, Oregon law determines the availability of punitive damages. Under Oregon statutes, punitive damages are not recoverable in a civil action unless it is proven by clear and convincing evidence that the party against whom punitive damages are sought acted with malice or has shown a reckless and outrageous indifference to a highly unreasonable risk of harm and has acted with a conscious indifference to the health, safety and welfare of others. The allegations presented by plaintiff failed to give rise to a possibility of recovering punitive damages. Plaintiff's amended complaint asserted that defendant incorrectly billed her at least seven times, and that defendant refused to adjust the accounting records in accordance with her requests.

Plaintiff then alleged "on information and belief" that defendant engages in other deceptive billing practices, "particularly targeting the elderly consumers." Plaintiff did not allege specifically that she was victimized by these other practices, and even if she had been, it is apparent from the face of the pleadings that the plaintiff could not establish that defendant acted with malice or showed a reckless and outrageous indifference to a highly unreasonable risk of harm.

Moreover, even if plaintiff presented a plausible claim for punitive damages, her prayer for \$75,000 bore no reasonable relationship to her actual alleged damages of \$29.90. Instead, the punitive damages prayed for appeared to be related to the jurisdictional requirements of 28 U.S.C. § 1332(a). Plaintiff would have been precluded from recovering \$75,000 even if punitive damages were appropriate.

Without a viable punitive damages claim, or alternatively the opportunity to recover \$75,000 in punitive damages, plaintiff failed to meet the requirements for diversity jurisdiction. Accordingly, the case was dismissed for lack of jurisdiction. Aquinas v. American Family Publishers, CV 98-609-HA (Order, March 29, 1999 - 5 pages).

Plaintiff's Counsel:

Timothy Quinelle

Defense Counsel: Mark Rutzick

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